IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos. 9873,9958 and 9902 of 1993

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNABEN JAYANTILAL PATEL - Petitioner(s)

Versus

DISTRICT PRIMARY EDUCATION OFFICER & 4 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioners in Special Civil Application Nos.9873 and 9958 of 1993

MR.C.B.DASTOOR for petitioner in Special Civil

Application No.9902 of 1993

Ms.Nandini Joshi,AGP for Respondent(s) : 1 - 2.
DS AFF.NOT FILED (N) for Respondent(s) : 3 - 5.

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CORAM : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 17/02/2006

COMMON **ORAL JUDGMENT**

1. These three writ petitions have been filed by the petitioners, who were serving as Primary Teachers under the respondents. Since the issue involved for determination in all three petitions is similar, they are being decided by a common judgment.

2. The brief facts leading to the filing of these petitions are detailed herein-below.

2.1 In Special Civil Application No.9958 of 1993,the petitioner was serving at Satharia Primary School,Taluka Meghraj and she was transferred to Rayan-no-mal Primary School, Taluka Modasa at her own request, on the ground as stated by her, that there was an excess of teachers at Satharia Primary School. The transfer was effected by order dated 17.7.1993 of the respondent No.1. The petitioner, in pursuance of this order, moved to the new place of transfer alongwith her family and household articles. However, within less than a month the respondent No.1, cancelled the earlier order vide his order dated 12.8.1993. Being aggrieved by this action of the

respondent No.1, the petitioner preferred Special Civil Application No.8317/93 in this Court. This Court, vide order dated 19.8.1993 directed the petitioner to make representation to respondent No.2. The respondent No.2 was directed to consider the same sympathetically and the petitioner was allowed to serve at the place of transfer until 10 days after the communication of the decision, if the same went against her. Accordingly, the petitioner made a detailed representation dated 30.8.1993 to the respondent No.2. The petitioner was given a personal hearing on 16.9.1993. Th respondent No.2, vide order dated 16.9.1993, rejected the representation of the partitioner on the ground that there was a deficiency of 13 teachers in Taluka Meghraj whereas there was a surplus of 33 teachers in Taluka Modasa. Therefore, the transfer of the petitioner to Primary School Rayan-no-mal in Taluka Modasa stood cancelled. After the decision of the representation by respondent No.2, as above, the respondent No.1 passed order dated 16.9.1993 to the effect that the cancellation of the transfer of the petitioner to the Primary School, Rayan-no-mal in Taluka Modasa stood as

before. Being aggrieved by the aforesaid two orders,the petitioner preferred present writ petition.

2.2 The position in Special Civil Application No.9873/93 is also similar. The petitioner therein was transferred to Primary School Chitrodi, Taluka Idar on the ground of excess of teachers by respondent No.1 vide order dated 18.6.1993. At her request, the transfer order was modified and she was transferred to Nava Primary School, Taluka Himatnagar vide order dated 17.7.1993 of respondent No.1. After having joined at the said school, the transfer was cancelled by order dated 12.8.1993 of respondent No.1. Special Civil Application No.8561 of 1993 was filed in this court and vide order dated 25.8.1993 the petitioner was directed to make a representation to respondent No.2. The representation was considered and rejected by the respondent No.2 vide order dated 16.9.1993 and consequently, respondent No.1 passed order dated 16.9.1993 directing that the petitioner be placed at School Khandhol in Taluka Himatnagar itself. This was done on the ground that there was an

excess of two teachers in Primary School Nava in Taluka Himatnagar. Being aggrieved by the aforesaid two orders, the petitioner preferred the present writ petition.

2.3 In Special Civil Application No.9902/93, as well, the petitioner has challenged the cancellation of her transfer order to Navanagar and her further transfer from Navanagar to Manpurkotda vide order dated 16.9.1993. The petitioner submits that she, alongwith her husband, was serving at village Hanumankampa, Taluka Meghraj, District Sabarkantha. The respondents transferred the husband of the petitioner, therefore, she made a representation to the respondents to transfer her, instead of her husband. That representation was considered and the respondents had transferred her to Navanagar, Taluka Meghraj. As this transfer was cancelled, as in other cases, the petitioner also moved Special Civil Application No.5316/93. The petitioner was directed to make a representation to the Director of Primary Education. This representation was duly made and rejected by the respondents after hearing the

petitioner vide order dated 16.9.93. Being aggrieved by the aforesaid two orders, the petitioner preferred the present writ petition.

3. Heard Shri K.B.Pujara, learned counsel for the petitioner in Special Civil Application Nos.9873 and 9958 of 1993 and Shri C.B.Dastoor, learned counsel for the petitioner in Special Civil Application No.9902/93 and Ms.Nandini Joshi, learned AGP for the respondents. The learned counsel for the petitioner have assailed the cancellation of the transfers on the ground that the respondents have disregarded the position regarding excess and surplus of teachers in the relevant Schools and have cancelled the transfers of the petitioners, which have already been implemented, in total disregard of the above fact. It is alleged that the respondents have cancelled the transfer orders of the petitioners in order to accommodate some other persons. There was no administrative reason or exigency for the cancellation of such transfers and this action has caused serious hardship to the petitioners. It has also been contended that the rejection of the

representations of the petitioners is in contravention to the orders passed by this court. Lastly it has been contended that under Section 24(i) of the Bombay Primary Education Act,1947 the respondent No.1 alone is vested with the statutory power of making transfers of Primary Teachers subject to the general instructions issued by respondent No.2. It is, therefore, not open to the respondent No.2 to pass individual and specific order with regard to any teacher as has been done in the present cases.

4. Per contra, Ms.Nandini Joshi appearing for the respondents has submitted that the representations made by the petitioners were duly considered including the certificate of the Head Master regarding the surplus and vacancy position, which has been placed on record of Special Civil Application No.9902/93 by the petitioner. After considering the entire position, the respondent No.2 has rejected the representations of the petitioners and cancelled their posting orders. Cogent reasons have been given by the respondent No.2 while doing so and the

respondent No.1 has further implemented the decision of the respondent No.2 upon the representation of the petitioners, and passed orders to this effect.

5. On a careful consideration of the contentions raised by both sides, it is clear that the petitioners have rested their cases squarely on the ground that their transfers were made on their own request and as such, should not have been cancelled. The argument put forward by the petitioners regarding the excess or deficit of teachers at the various schools seems to have been advanced only in order to lend legitimacy to this challenge. It cannot be said that the petitioners are the best persons to judge the excess or deficiency position of teachers in the Primary Schools run by the respondents. These are administrative matters, which fall under the realm of the competent authority in this regard. When the cause of action had accrued to the petitioners they had approached this Court by filing Special Civil Applications and this Court had directed them to make representations to the respondent No.2, who was directed to consider the same sympathetically.

Accordingly, the petitioners had made detailed representations to respondent No.2, who had given them a personal hearing before deciding the same. The respondent No.2 has considered the position regarding deficiency and surplus of teachers in the various Primary Schools that had been pointed out by the petitioners and, in the impugned orders dated 16.9.93, the factual position on record has been clearly mentioned. It has been stated that due to the position as it stood in this regard in various Schools, as stipulated in order dated 16.9.93, the cancellations of the transfer orders of the petitioners were re-affirmed.

6. This Court had only directed that the petitioners should make representations to respondent No.2, who was directed to consider them sympathetically. This having been done, it was open to the respondent No.2 to consider the said representations and decide the same. In this view of the matter, the argument advanced by the learned counsel for the petitioners that the decision of the respondent No.2 dated 16.9.93 is contrary to the

order of this court, cannot be accepted, since the discretion to decide was vested with the respondent No.2.

7. It is clear from the material on record that the impugned cancellations of the transfer orders of the petitioners is not an outcome of malafide exercise of power or in order to unduly favour any other person, but it is only a result of the ground reality position regarding the existing status of excess and deficiency of teachers in the various schools, which had to be balanced by the respondents. It is very much in the public interest, that the Primary Schools which cater to the educational requirements of children in rural areas, should be properly manned by adequate staff, so that the studies of the students do not suffer. The petitioners may have made requests for their transfers at some point of time and the respondents may have even acceded to the same. However, this does not estop the respondents from cancelling such transfer orders and from posting the petitioners to other Schools, if the administrative exigencies so demand. After all, the

public interest has to be given priority over personal hardship. In **(2001)8 SCC 574 (National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan)** the Supreme Court has observed:

> "5. On a careful consideration of the submissions of the learned counsel on either side and the relevant Rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory previsions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.
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> (emphasis supplied)

8. It has been contended that the respondent No.2 could not have passed the impugned order dated 16.9.93 in view of the provisions of Section 24(i) of the Bombay Primary Education Act, 1947 since, as per

the above provisions, the respondent No.1 alone has statutory power to make transfer of Primary Teachers subject to the general instructions issued by respondent No.2. In this regard, it is relevant to note that the petitioners, being aggrieved by the cancellation of their transfer orders, had earlier approached this Court by way of filing Special Civil Applications and this Court had directed them to make representations to the respondent No.2, who was to consider the same sympathetically. In this view of the matter, it was incumbent upon respondent No.2 to hear the petitioners and decide the representations by passing speaking orders, which he has done. To give further effect to the order upon the representation passed by the respondent No.2, the respondent No.1 has issued necessary administrative orders in this regard. It cannot, therefore, be contended that respondent No.2 has issued the orders at his own behest, in disregard of the provisions of the above Act. He has only decided the representations as directed by this Court, and respondent No.1 has passed the necessary orders to give effect to such decision.

9. What emerges from the above discussion is that the cancellation of the transfer orders of the petitioners are not an outcome of malafide exercise of power and nor is there any violation of the provisions of any statute or rule. The challenge of the petitioners to the impugned orders passed by the respondents, therefore fails. The action of the respondents suffers from no legal infirmity.

10. In view of the above, the writ petitions are dismissed. Interim orders in all the petitions are vacated and rule is discharged. Parties to bear their own costs.

(Smt.Abhilasha Kumari,J)

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